IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4218 OF 2002

Mr.Sher Mohammad Mohammad Hussein Shaikh....Applicant
V/s.
Mr.Ramchandra Vaishnav & Ors. ....Respondents

Mr.P.R. Salvi for the Applicant.
Mr.Y.M. Nakhawa, APP for the State.

CORAM : V.M. KANADE, J.

DATED : SEPTEMBER 10, 2007

P.C. :-

. Heard the learned Counsel for the applicant and the learned APP for the State.

2. The applicant who is the original complainant is challenging the order passed the Chief Judicial Magistrate dated 20th July, 2002 whereby the accused respondents were acquitted for the offence punishable under Section 406, 417, 419, 420, 465 read with Section 114 of IPC.

3. It is the case of the applicant that he was owner of certain land and he had entered into agreement for development with the accused who as per the

agreement had to give to the complainant two flats and two shops in the building which was to be constructed on the said land. It is alleged that since the accused did not give the applicant possession of the said flats, however, thereafter, it was agreed by the revised agreement that he would be put in possession of two flats admeasuring 1020 sq.ft. which would be residential premises and 195 sq.ft. premises towards the shop which were agreed to be handed over by the accused to the complainant. It is submitted that pursuant to the said agreement, the accused handed over the said flats to him. It is the case of the complainant that after he took possession of the said flat, he realised that the residential premises were in fact 185 sq.ft. less and the commercial premises were also not as promised but were less than 105 sq.ft. The trial Court after perusing the evidence on record held that the complainant had not substantiated the allegations which were made against the accused. The trial Court after perusing the documentary and oral evidence on record, has observed that there was a delay in filing the complaint and that the two documents

clearly established that they were executed much before the complainant was put in possession. The trial Court has, therefore, taken one view and has acquitted the accused. No case is made out for interfering with the order. It cannot be said that the finding recorded by the trial Court is perverse. Hence, leave is refused. Application is dismissed.

(V.M. KANADE, J.)